

(2) The P&A system determines there is probable cause to believe that an incident has or may have occurred; or

(3) The P&A system determines that there is or may be imminent danger of serious abuse or neglect of an individual with mental illness.

(c) In addition to access as prescribed in paragraph (b) of this section, a P&A system shall have reasonable unaccompanied access to facilities including all area which are used by residents, are accessible to residents, and to programs and their residents at reasonable times, which at a minimum shall include normal working hours and visiting hours. Residents include adults or minors who have legal guardians or conservators. P&A activities shall be conducted so as to minimize interference with facility programs, respect residents' privacy interests, and honor a resident's request to terminate an interview. This access is for the purpose of:

(1) Providing information and training on, and referral to programs addressing the needs of individuals with mental illness, and information and training about individual rights and the protection and advocacy services available from the P&A system, including the name, address, and telephone number of the P&A system.

(2) Monitoring compliance with respect to the rights and safety of residents; and

(3) Inspecting, viewing and photographing all areas of the facility which are used by residents or are accessible to residents.

(d) Unaccompanied access to residents shall include the opportunity to meet and communicate privately with individuals regularly, both formally and informally, by telephone, mail and in person. Residents include minors or adults who have legal guardians or conservators.

(e) The right of access specified in paragraph (c) of this section shall apply despite the existence of any State or local laws or regulations which restrict informal access to minors and adults with legal guardians or conservators. The system shall make every effort to ensure that the parents of minors or guardians of individuals in the care of a facility are informed that

the system will be monitoring activities at the facility and may in the course of such monitoring have access to the minor or adult with a legal guardian. The system shall take no formal action on behalf of individuals with legal guardians or conservators, or initiate a formal attorney/client or advocate/client relationship without appropriate consent, except in emergency situations as described in § 51.41(b)(3).

(f) A P&A system providing representation to individuals with mental illness in Federal facilities shall have all the rights and authority accorded other representatives of residents of such facilities pursuant to State and Federal laws.

§ 51.43 Denial or delay of access.

If a P&A system's access to facilities, programs, residents or records covered by the Act or this part is delayed or denied, the P&A system shall be provided promptly with a written statement of reasons, including, in the case of a denial for alleged lack of authorization, the name, address and telephone number of the legal guardian, conservator, or other legal representative of an individual with mental illness. Access to facilities, records or residents shall not be delayed or denied without the prompt provision of written statements of the reasons for the denial.

§ 51.44 [Reserved]

§ 51.45 Confidentiality of protection and advocacy system records.

(a) Records maintained by the P&A system are the property of the P&A system which must protect them from loss, damage, tampering or use by unauthorized individuals. The P&A system must:

(1) Except as provided elsewhere in this section, keep confidential all records and information, including information contained in any automated electronic database pertaining to:

(i) Clients to the same extent as is required under Federal or State laws for a provider of mental health services;

(ii) Individuals who have been provided general information or technical assistance on a particular matter;